



October 27, 2003

Water Docket  
Environmental Protection Agency  
Mail Code 4101T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
Email: OW-Docket@epa.gov  
Attention Docket ID No. OW-2003-0065

**Re: Comments on the Environmental Protection Agency's Proposed Revised Policy on the Applicability of the Safe Drinking Water Act to Submetered Properties**

On behalf of the Manufactured Housing Institute (MHI) and its National Communities Council (NCC), I am pleased to submit the following comments regarding EPA's proposed *Revised Policy on the Applicability of the Safe Drinking Water Act to Submetered Properties* published in the *Federal Register* on August 28, 2003. MHI is the national trade association representing manufactured and modular home producers, community owners, retailers, financial institutions and suppliers. MHI's National Communities Council is the only national organization representing manufactured home community owners, managers and developers. Collectively, NCC members own and/or manage nearly 400,000 leased manufactured home sites across the country.

First, the MHI-NCC would like to applaud EPA's efforts to encourage conservation through water submetering. Under the proposed policy revision, residential property owners who submeter for water that is coming from a regulated public water system (PWS) would no longer be subject to the Safe Drinking Water Act (SDWA) requirements. MHI-NCC members have long sought such a change in the water submetering policy since its application has discouraged submetering of manufactured home communities and therefore water conservation.

However, we would also like to express our strongly held view that manufactured housing communities should be specifically included in the definition of "residential property" in the newly revised policy. In past memorandums, EPA stated that any property owner who bills tenants separately for water is "reselling" the water and is therefore by definition a PWS. Subsequently, as a PWS, it is subject to the requirements within the SDWA, even when the property owner is providing water from a regulated water system that is already required to meet all SDWA safety and testing requirements. Therefore, under the current interpretation of SDWA requirements, many manufactured

housing community owners choose not to submeter their communities because of the required redundant testing of water that is already performed by the regulated water system.

Water submeters measure the water and related energy used in each home in a manufactured home community, and they encourage residents to conserve not only a significant amount of water, but also the energy used in hot water, water delivery and wastewater. Residents who individually pay for water generally consume 18-39 percent less water than those with one shared water meter. Moreover, submetering encourages residents to be accountable for any plumbing problems they have and for the water that is wasted as a consequence. For every dollar saved in water use, a resident will typically save \$0.50 in energy. There also are savings in the "embedded" energy used to operate water and wastewater systems. Also, submetering is the most equitable way for a community owner to reduce water usage. Residents only pay for their actual use, not someone else's waste.

MHI believes that the past EPA memorandums on this issue expressed a misinterpretation of the original intent of Congress when EPA defined the act of selling water to include the mere billing for water usage even when the water comes from a regulated water system.

However, in its March 13, 1998 memo to EPA Water Division Directors, EPA pointed out that Congress intended the primary drinking water regulations to "apply to housing developments, motels, restaurants, trailer parks, and other business serving the public if the business in question maintains its own well or water supply and sells water." This language clearly only applies to manufactured home communities (or "trailer" or "mobile home" parks) that maintain their own water supply and also sell the water, not those that merely resell water from a regulated PWS.

The MHI-NCC agrees with EPA's statement in the *Federal Register* notice on the proposed policy revision that "it makes no sense, as a matter of statutory interpretation, health protection, or SDWA implementation policy, to subject an entity to the full suite of SDWA requirements simply as a result of a decision about who sends a water bill, especially when the water is already coming from a regulated public water system."

#### **Responses to Specific Questions Posed by EPA:**

- 1. Should the parent public water system be required to have access to submetered properties for the purposes of monitoring, inspection, repair, etc. to assure compliance with the SDWA?*

The MHI-NCC does not believe that such a requirement is necessary given EPA's own statement that there is no linkage between the mere act of billing for water and water safety. There are already adequate protections in place for residents through state and local laws governing public water systems, as well as tort remedies, in the event of a water safety problem in a submetered manufactured home community, just as there currently are for residents without the benefit of submeters. Again, the act of submetering has no impact on water safety. Further, such a requirement could raise legitimate private property concerns that could unnecessarily involve EPA in takings disputes. The MHI-NCC believes that EPA should defer to existing state and local law in this area.

2. *Are there public health risks raised by this submetering policy that EPA has not taken into consideration?*

It is the MHI-NCC's understanding that EPA does have some concern about including some properties under the policy change due to the method of distribution of water (i.e. several water lines running in a manufactured home community and/or apartment complex versus a single apartment building). The act of submetering has no impact on water safety. The water is just as safe as that in manufactured home communities that include water usage in their site rental fee or those submetered communities that have billing handled by the regulated PWS. In neither of those cases is the community owner responsible for compliance with the SDWA—the PWS is responsible. Communities that do not store, handle or treat water from the parent PWS should not be regulated, whether they submeter the water or not. The PWS is already fully regulated by the SDWA, and residents are further protected by applicable plumbing codes.

We believe that Congress' intent in Section 1411 of the SDWA was directed at large public water systems selling water to adjacent jurisdictions, such as a city selling to a suburb, in which water would be traveling large distances through varying types of soil conditions, including industrial areas and brownfields. Such a situation does not exist with manufactured home communities, in which water is traveling a short distance from the main public water source to the home. We do not believe there are additional health risks from including submetered manufactured home communities in this policy.

3. *Should EPA maintain the limitation of the draft revised policy to residential properties such as apartment buildings, or is it appropriate to extend the SDWA exemption for submetering to other property types?*

For all the reasons discussed above, the MHI-NCC strongly believes that policy should explicitly state that manufactured home communities are covered by this policy change.

4. *Does data exist that indicates submetering may present a disincentive to landlords to convert to water efficient fixtures and appliances, or could this approach impact other methods that promote water conservation?*

Generally, manufactured home community owners do not own the homes in their communities, just the underlying real property which they lease to homeowners. However, the MHI-NCC believes that submetering within the community encourages the homeowners to install water efficient fixtures and appliances as a way to reduce water consumption since they are directly responsible for the amount of water they use. We believe applying this revised policy to manufactured home communities will lead to increased water conservation efforts by both manufactured home community owners and the homeowners within the community.

Again, the MHI-NCC applauds EPA for this effort to improve water conservation. Thank you for the opportunity to comment on the revised policy. If you have questions, feel free to contact Sherri Cabrera or myself at (703) 558-0400.

Sincerely,



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MHI National Communities Council